Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991

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CG Docket No. 02-278

FURTHER NOTICE OF PROPOSED RULEMAKING

Adopted: March 24, 2003 Released: March 25, 2003

Comment Date: 30 days after publication in the Federal Register
Reply Comment Date: 45 days after publication in the Federal Register

By the Commission:

I. INTRODUCTION

On March 11, 2003, the Do-Not-Call Implementation Act (Do-Not-Call Act) was signed into law requiring the Federal Communications Commission (FCC or Commission) to issue a final rule in the above-captioned proceeding within 180 days of March 11, 2003 and to consult and coordinate with the Federal Trade Commission (FTC) to maximize consistency with the rule promulgated by the FTC in 2002. The Do-Not-Call Act also requires the Commission to issue reports to Congress within 45 days after the promulgation of final rules in this proceeding, and annually thereafter. In this Further Notice of Proposed Rulemaking (Further Notice), we seek comment on these requirements.

II. BACKGROUND

On December 20, 1991, Congress enacted the Telephone Consumer Protection Act of 1991 (TCPA) in an effort to address a growing number of telephone marketing calls and certain telemarketing practices thought to be an invasion of consumer privacy and even a risk to public safety. The statute restricts the use of automatic telephone dialing systems, artificial and prerecorded messages, and telephone facsimile machines to send unsolicited advertisements. The TCPA specifically authorizes the Commission to "require the establishment and operation of a single national database to compile a list of telephone numbers of residential subscribers who object to receiving telephone solicitations." In 1992, the Commission adopted rules implementing the TCPA but declined to create a national database of telephone subscribers who do not wish to receive calls from telemarketers. The Commission opted instead to implement an

alternative scheme — one involving company-specific do-not-call lists. In 1995 and 1997, the Commission released orders addressing petitions for reconsideration of the TCPA Order.

On September 18, 2002, the Commission released a Notice of Proposed Rulemaking (NPRM) and Memorandum Opinion and Order (MO&O) seeking comment on whether the Commission's rules need to be revised in order to carry out more effectively Congress's directives in the TCPA. Specifically, we sought comment on whether to revise or clarify our rules governing unwanted telephone solicitations and the use of automatic telephone dialing systems, prerecorded or artificial voice messages, and telephone facsimile machines. We also sought comment on the effectiveness of company-specific do-not-call lists. In addition, we sought comment on whether to revisit the option of establishing a national do-not-call list and, if so, how such action might be taken in conjunction with the FTC's proposal to adopt a national do-not-call list and with various state do-not-call lists. In considering ways in which we might improve our TCPA rules, our goal is to enhance consumer privacy protections while avoiding imposing unnecessary burdens on the telemarketing industry, consumers, and regulators. Lastly, we sought comment on the effect proposed policies and rules would have on small business entities, including inter alia those who engage in telemarketing activities and those who rely on telemarketing as a method to solicit new business.

On December 18, 2002, the FTC released an order establishing a national do-not-call registry and making other changes to its Telemarketing Sales Rule. Congress approved funding for the FTC's do-not-call registry as part of the 2003 omnibus budget. Furthermore, the FTC has announced that it will begin to take registrations for a do-not-call registry on July 1, 2003, and that the registry will go into effect on October 1, 2003.

III. DISCUSSION

In the Do-Not-Call Act, Congress requires this Commission to issue final rules in the above-captioned proceeding by September 7, 2003. The Do-Not-Call Act provides that the FCC shall consult and coordinate with the FTC to maximize consistency with the rule promulgated by the FTC. Congress also requires the Commission to transmit a report on regulatory coordination to the House Committee on Energy and Commerce and the Senate Committee on Commerce, Science, and Transportation. The Commission is required to provide:

An analysis of the telemarketing rules promulgated by both the Federal Trade Commission and the Federal Communications Commission;

An analysis of any inconsistencies between the rules promulgated by each Commission and the effect of any such inconsistencies on consumers, and persons paying for access to the registry; and

Proposals to remedy any such inconsistencies.

The Do-Not-Call Act also requires the Commission to file an annual report to the House Committee on Energy and Commerce and the Senate Committee on Commerce, Science and Transportation, which includes:

An analysis of the effectiveness of the "do-not-call" registry as a national registry;

The number of consumers who have placed their telephone numbers on the registry;

The number of persons paying fees for access to the registry and the amount of such fees;

An analysis of the progress of coordinating the operation and enforcement of the "do-not-call" registry with similar registries

established and maintained by the various States;
An analysis of the progress of coordinating the operation of the "do-not-call" registry with the enforcement activities of the Commission pursuant to the TCPA; and
A review of the enforcement proceedings by the Commission under the TCPA.
As stated above, the Do-Not-Call Act requires the FCC, in the course of the above-captioned proceeding, to "maximize consistency" with FTC's recent amendments to its Telemarketing Sales Rule. We seek comment on how the FCC can maximize consistency with the FTC's rule. We encourage commenters to review the rule promulgated by the FTC and to comment on how the FCC should consider amending its rules, given the new statutory directive. We seek comment on how the goals and principles identified in the Do-Not-Call Act should affect our implementation of the Act and how to harmonize the requirements of the Do-Not-Call Act with our statutory mandate in the TCPA. We also seek comment on how the FCC can best fulfill the reporting requirements contained in the statute. Parties are advised not to reiterate comments previously filed in this proceeding because any previously filed comments, to the extent they are relevant to adopting rules that maximize consistency with the FTC's rules, will be duly considered. We note that nothing in this Further Notice modifies the Initial Regulatory Flexibility Analysis (IRFA) we published with the NPRM. However, we welcome any additional comments on that IRFA that may arise because of this Further Notice.

IV. Procedural Issues

A. Ex Parte Presentations

This is a non-restricted notice and comment rulemaking proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided that presentations are disclosed as provided in the Commission's rules.

B. Filing of Comments and Reply Comments

We invite comment on the issues and questions set forth above. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments on or before 30 days after publication in the Federal Register, and reply comments on or before 45 days after publication in the Federal Register. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 Fed. Reg. 24121 (1998).
Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form." A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding,

commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. Parties also should send four (4) paper copies of their filings to Kelli Farmer, Federal Communications Commission, Room 4-C740, 445 12th Street, S.W., Washington, DC 20554.
Accessible formats (computer diskettes, large print, audio recording and Braille) are available to persons with disabilities by contacting the Consumer & Governmental Affairs Bureau, at (202) 418-0531, TTY (202) 418-7365, or at fcc504@fcc.gov.

V. Ordering Clause
Accordingly, IT IS ORDERED that, pursuant to the authority contained in Sections 1-4, 227 and 303(r) of the Communications Act of 1934, as amended; the Do-Not-Call Implementation Act, Pub. L. No. 108-10, 117 Stat. 557; 47 U.S.C. §§ 151-154, 227 and 303(r); and 47 C.F.R. §§ 64.1200 and 64.1201 of the Commission’s rules, the FURTHER NOTICE OF PROPOSED RULEMAKING IS ADOPTED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

To Whom it May Concern:

I am writing about Docket No. 02-278, the Commission's "Do Not Call" rule, and action the Commission is considering taking to supersede individual state "do not call" laws that are more restrictive than the rules promulgated by the Commission.

I am a resident of New Jersey, which has the most restrictive "do not call" law in the nation. Among other things, the New Jersey statute prohibits businesses from making calls even to individuals with whom they have transacted business in the recent past, which is otherwise allowed under the Commission's own rule. I strongly urge the Commission to refrain from placing any restrictions on the the

individual states' laws.

While I have not reviewed comments from telemarketers and others who seek to have more restrictive state legislation in this area overridden by the Commission, presumably their most prominent (and indeed only legitimate) argument would be the difficulty of complying with a myriad of different state laws in this area. This concern, while having a small measure of legitimacy, is completely outweighed by the right and interest of individuals, speaking through their elected state representatives, to retain their right to privacy and to be left alone.

The difficulty in complying with different state "do not call" laws is real but not overwhelming, nor indeed even unduly burdensome, because the computerized lists that marketing companies use to make calls enables them to comply with a minimum of effort.

These lists can be segregated by the states in which the persons reside so that the differing legal requirements of each state can be taken into account. Businesses already must comply, and do so successfully, with differing state laws in many other areas, such as sales tax collection, building codes, and the like. Compliance with telemarketing rules that vary slightly from state to state will not be difficult at all for these businesses.

The minimal amount of effort these businesses must make in order to comply with different states' laws pales in comparison with the interests of consumers in not receiving such calls in the first place. For instance, New Jersey's prohibition on calls being made to recent customers closes a potentially large loophole in the Commission's rule. Most consumers approach a particular businesses for a specific product or service, and that business has the opportunity at the time of supplying that good or service to inquire whether the consumer might be interested in another offering of the concern. That is certainly the best time for making such an inquiry, not months after the fact. My personal experience prior to promulgation of the "do not call" rule was that virtually all follow-up calls of this nature were for goods and services I had no use for, such as life and accident insurance for my credit card.

If the New Jersey law is overridden by the Commission, I could once again receive calls for goods and services which I invariably find of no value or use to me. In fact, businesses could exploit and abuse the Commission's rule by using their business relationship with me to make telephone calls on behalf of other businesses that have no such relationship.

Put simply, concumers are capable of finding the goods and services they need on their own, through the avenues of mass communication that have worked well for American businesses for many years - newspaper, radio, television, and direct-mail advertising. There is no need for companies to tie up my only telephone line for their own commercial purposes.

I would note that the Commission itself has imposed (or allowed phone companies the charge their customers) very heavy fees on individual telephone subscribers, such as myself, in the form of

"universal access" fees and "regulatory fee recovery" charges. These fees can add up to half the bill, as they do in my case. It is a great injustice for the Commission to impose a double burden on consumers: these tremendous fees and telemarketing pitches that fit into the rather sizable loophole the Commission has left open.

Please do not override the states' laws in this very important area. Thank you.